(3)

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

Criminal Revision No. 242 Of 2006

APPLICANT : Parwej Alam S/o Mohd Sabir, aged about 23 years, resident of Farid Nagar, Nizami Chowk, Supela Bhilai, Tahsil and District Durg (CG).

1665/06

Filed on 12/04/06

by Shri Alok Pandey

Advocate

VERSUS

R to D.R. (J)

RESPONDENT : State of Chhattisgarh, through the District Magistrate Durg (CG).

MEMORANDUM OF CRIMINAL REVISION U/S 397 READ WITH SECTION 401 OF Cr.P.C.

XI-HC-22

(16)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. Rev. No. 242 सन् 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर-सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11.05.2006

Shri Arun Kochar, learned counsel for the applicant.

Shri Ashish Shukla, G.A. for State.

This revision is finally heard today at the stage of admission.

It is directed against the judgment dated 21-03-2006 passed by 12th Additional Sessions Judge, (F.T.C.), Durg in Criminal Appeal Number-394/2004 whereby the conviction of the applicant under Section-34 (a) of Chhattisgarh Excise Act was maintained while reducing the sentence awarded by the trial Judge to the sentence already undergone by the applicant and fine of Rs.25,000/- and in default of payment of fine to undergo simple imprisonment for 3 months was awarded.

Brief facts are that on 21-06-2001 upon receiving secret information Sub Inspector K.R.Kanwar PW-6 seized 384 quarters of Goa Special Whisky kept in 8 cartons from the possession of the applicant at Gautam Nagar, Near Sulabh, P.S. Supela. The seized liquor was sent for analysis to the Excise Sub Inspector Lav Kumar Mishra, PW-5 who opined that the seized liquor was foreign liquor. After completion of investigation, the applicant was prosecuted under Section-34 (a) of Chhattisgarh Excise Act.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Shri Arun Kochar, learned counsel for the applicant has assailed the conviction of the applicant on the ground that the prosecution has not led any cogent evidence to establish that the liquor was seized from the conscious possession of the applicant. There was no material to show that after affecting the seizure, the liquor was sealed. It was also admitted by the Investigating Officer K.R.Kanwar Sub Inspector PW-6 that seized liquor was not produced before the trial Court. On these premises, it was contended that the conviction of the applicant for the offences under Section-34 (a) of Chhattisgarh Excise Act and the sentence awarded thereunder are liable to be set aside.

On the other hand, Shri Ashish Shukla, learned Govt. Advocate has argued in support of the impugned judgment.

Having considered rival submission, I have perused the record. In my considered opinion, this Revision deserves to be allowed for the following reasons:-

1. The testimony of Sub Inspector K.R.Kanwar PW-6 clearly shows that the seized liquor was not produced before the trial Court so as to facilitate comparison of seals by the Court and to provide an opportunity to the applicant to get it analysed to negate the fact of its being foreign liquor.

[पीछे देखिये

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. The testimony of Sub Inspector K.R.Kanwar PW-6 also does not reveal that after affecting the seizure of the 8 cartons of Goa Special Whisky, the same was sealed. It is also not shown that the articles examined by the Excise Sub Inspector Lav Kumar Mishra PW-5 were the same articles which were alleged to have been seized from the possession of the applicant since the articles were not sent under sealed condition.

3. Sub Inspector K.R.Kanwar PW-6 admitted in para-8 that he had seized the liquor from the house of Farzana Khatun who was examined as PW-3 by the prosecution. Farzana Khatun PW-3 did not support the prosecution story and denied that he had given her house situated in Gautam Nagar to the applicant on rent.

4. There is no reliable and cogent evidence to show that the applicant was in conscious possession of the 8 cartons of Goa Special Whisky.

5. Independent witnesses of seizure Puneet Kumar PW-2 & Bablu Soni PW-10 did not support the factum of seizure from the applicant.

6. The testimony of Rama Shankar Singh PW-11 revealed that 8 cartons of liquor " Goa Special Whisky" was seized from a hut near Gautam Nagar, Near Sulabh. However, the seizure memo Ex.P-2 did not show in any manner that the liquor was seized from any hut or dwelling unit. It simply mentions that liquor was seized

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

from the applicant on the road from Krishna Nagar near the Sulabh at Gautam Nagar.

7. The testimony of Sub Inspector K.R.Kanwar PW-6 in para-7 also shows that there is no material on record to show that the seized foreign liquor was kept in safe custody at the Police Station. Malkhana Register has also not been proved by the prosecution.

8. The trial judge being a judicial magistrate first class had no jurisdiction under section 29 of the Cr.P.C. to award a sentence of fine of Rs.25,000/-.

On the basis of above, conviction of the applicant under Section-34 (a) of C.G. Excise Act and the sentence awarded thereunder being wholly contrary to law are liable to be set aside in exercise of revisional jurisdiction.

In the result, this Criminal Revision No.242/2006 is allowed. Conviction of the applicant under Section-34 (a) of C.G. Excise Act and the sentence awarded thereunder are set aside. The applicant shall be set at liberty forthwith, if not required in any other case. Fine if paid, shall be refunded to the applicant.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Thane

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Ltr 12-5-06